

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

MARTI SUE FRAZIER,
Charging Party

Case # 0109014622

-v-

FINAL AGENCY DECISION

YELLOWSTONE MINE RESTAURANT,
Respondent/Appellant

Charging Party, Marti Sue Frazier, filed a complaint with the Department of Labor and Industry (Department), which alleged discrimination in employment on the basis of age and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence supported Frazier's allegations. The case went before the Hearings Bureau of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearings officer issued a Decision on December 15, 2011. The hearings officer determined that Yellowstone Mine Restaurant had discriminated against Frazier on the basis of her age and in violation of the Montana Human Rights Act. The hearing officer enjoined Yellowstone Mine Restaurant from discriminating against any employee on the basis of age and ordered the Respondent to pay a total \$14,567.25 to Frazier for lost earnings and emotion distress damages.

Yellowstone Mine Restaurant filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 21, 2012. Michael Anderson, attorney, appeared and presented oral argument on behalf of Yellowstone Mine Restaurant. Alex Rate, attorney, appeared and presented oral argument on behalf of Marti Sue Frazier.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of

fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of Mont. 24.9.123(4)*. A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3rd 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *Denke*, ¶ 39.

DISCUSSION

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer's findings of fact were supported by substantial evidence and the hearing officer correctly applied the law. Consequently, the Commission affirms the hearing officer's Decision in its entirety.

ORDER

IT IS HEREBY ORDERED, that the appeal of Yellowstone Mine Restaurant is denied. The Commission affirms, adopts and incorporates the entire Hearing Officer Decision, dated December 15, 2011, within this Final Agency Decision.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA*. This review must be requested within 30 days of the date of this order.

DATED this 28th day of March, 2012.

_____/Im minich/_____
L.M. Minich, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 28th day of March, 2012.

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_____/tamnewby/_____
Tam Newby, Legal Secretary
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